



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 221107-0236]

RTID 0648-XC864

Atlantic Highly Migratory Species; Commercial Shark Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS is transferring 40 metric tons (mt) dressed weight (dw) (88,184 pounds (lb) dw) of aggregated large coastal shark (LCS) quota from the eastern Gulf of Mexico sub-region to the western Gulf of Mexico sub-region for the remainder of the 2023 fishing year. This action is based on consideration of the regulatory determination criteria regarding inseason quota transfers and affects commercial Atlantic shark permitted vessels and dealers.

DATES: Effective March 21, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Ann Williamson

(ann.williamson@noaa.gov), Guy DuBeck (guy.dubeck@noaa.gov), or Karyl Brewster-Geisz (karyl.brewster-geisz@noaa.gov) at 301-427-8503.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Section 635.27(b) describes the baseline quotas for different shark management groups and regions, describes the process for

annual adjustments to those baseline quotas, and includes the criteria to consider for inseason quota transfers between regions and sub-regions. Section 635.28(b) describes quotas that are linked for management purposes.

On November 14, 2022 (87 FR 68104), NMFS announced the 2023 commercial western Gulf of Mexico aggregated LCS (72.0 mt dw; 158,724 lb dw) and eastern Gulf of Mexico aggregated LCS (85.5 mt dw; 188,593 lb dw) sub-regional quotas. Based on dealer reports received as of March 16, 2023, NMFS estimates that in the western Gulf of Mexico sub-region, approximately 72.0 mt dw (approximately 158,700 lb dw) or approximately 100 percent of the aggregated LCS sub-regional quota has been landed. In the eastern Gulf of Mexico sub-region, there has been no reported landings of aggregated LCS.

Regulations provide that quotas for certain shark species and/or management groups are linked, including western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS (see § 635.28(b)(4)). Regulations further provide that for each pair of linked species and/or management groups, if landings reach, or are projected to reach, a threshold of 80 percent of the available quota and are also projected to reach 100 percent of the available quota before the end of the 2023 fishing year, NMFS will close the relevant shark management groups (see § 635.28(b)(3)). At this time, without further action, NMFS projects that the western Gulf of Mexico aggregated LCS management group quota has already been exceeded. Without a quota transfer, NMFS would need to close the western Gulf of Mexico aggregated LCS group and the linked western Gulf of Mexico hammerhead group.

Under § 635.27(b)(2), NMFS may transfer quota inseason between regions or sub-regions. Such transfers may occur for species or management groups that are the same in both regions or sub-regions and the quota is split for management purposes and not as a result of a stock assessment. As described at § 635.27(b)(1)(ii), the sub-regional

splits for the quotas in the Gulf of Mexico region were done for management purposes. Therefore, NMFS may transfer aggregated LCS quota between Gulf of Mexico sub-regions. Before making any such transfer, NMFS must consider the following determination criteria in § 635.27(b)(2)(iii), and other relevant factors: (1) The usefulness of information obtained from catches in the particular management group for biological sampling and monitoring of the status of the respective shark species and/or management group; (2) the catches of the particular species and/or management group quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; (3) the projected ability of the vessels fishing under the particular species and/or management group quota to harvest the additional amount of corresponding quota before the end of the fishing year; (4) effects of the adjustment on the status of all shark species; (5) effects of the adjustment on accomplishing the objectives of the fishery management plan; (6) variations in seasonal distribution, abundance, or migration patterns of the appropriate shark species and/or management group; (7) effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the quota; and/or (8) review of dealer reports, daily landing trends, and the availability of the respective shark species and/or management group on the fishing grounds.

NMFS has determined that, for the Gulf of Mexico aggregated LCS sub-regional landings, the eastern Gulf of Mexico aggregated LCS sub-regional landings are not projected to reach their quota by the end of the year and that the western Gulf of Mexico aggregated LCS sub-regional quota has exceeded 80 percent (approximately 100 percent) of their quota and may have already exceeded the quota. Therefore, NMFS has considered the inseason quota transfer criteria, documented in the **Quota Transfer** section below, and determined that a transfer from the sub-regional eastern Gulf of Mexico aggregated LCS quota to the western Gulf of Mexico aggregated LCS quota is

warranted to avoid potential closure of the western Gulf of Mexico aggregated LCS quota and the western Gulf of Mexico hammerhead shark quota, which are linked under § 635.28(b)(4)(iii), while fishing opportunities still exist.

Quota Transfer

After fully considering all the criteria listed above, NMFS is taking action to transfer aggregated LCS quota from the eastern Gulf of Mexico sub-regional quota to the western Gulf of Mexico sub-regional quota. NMFS' consideration of the relevant criteria found at § 635.27(b)(2)(iii) includes, but is not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(b)(2)(iii)(A)), biological samples collected by NMFS scientific observers on commercial vessels targeting aggregated LCS and hammerhead sharks continue to provide NMFS with valuable data for ongoing scientific studies of shark age and growth, migration, and reproductive status. This is especially important for the upcoming bull, spinner, and tiger shark assessments that are expected to begin in 2024.

Regarding the catches of the quotas to date and the likelihood of a fishery closure if no adjustment is made, commercial shark dealer data show that landings of the western Gulf of Mexico aggregated LCS have exceeded 80 percent of the quota (approximately 100 percent). Once the landings exceed the threshold of 80 percent of the quotas and are also projected to reach 100 percent before the end of the 2023 fishing year, the western Gulf of Mexico aggregated LCS and hammerhead shark management groups would need to close absent a transfer of additional quota.

NMFS also analyzed landings data, catch trends, and potential migration of the species involved (§ 635.27(b)(2)(iii)(C)-(D) and (F)-(H)) and determined that under current fishing rates, 40 mt dw (88,184 lb dw) of eastern Gulf of Mexico sub-regional aggregated LCS is a reasonable amount of quota to transfer, allowing fishermen the

opportunity to fully utilize the available shark quotas while avoiding negative economic impacts that would occur by closing the shark management groups. This action will not have impacts beyond those already analyzed in the 2006 Consolidated HMS FMP and its amendments and thus is not expected to negatively impact the stock.

Regarding the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(b)(2)(iii)(E)), this action is consistent with the quotas previously implemented and analyzed in the 2023 shark quota final rule (87 FR 68104, November 14, 2022) and in Amendment 5a (78 FR 40317, July 3, 2013) and Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50073, August 18, 2015). Specifically, this action is consistent with the objective of providing opportunities to fully harvest shark quotas without exceeding them.

Based on the considerations above, NMFS is transferring 40 mt dw (88,184 lb dw) of eastern Gulf of Mexico aggregated LCS sub-regional quota to the western Gulf of Mexico aggregated LCS sub-regional quota as of March 21, 2023. This quota transfer results in adjusted quotas of 45.5 mt dw (100,409 lb dw) for aggregated LCS in the eastern Gulf of Mexico sub-region and 112 mt dw (246,908 lb dw) for aggregated LCS management group in the western Gulf of Mexico sub-region. If landings and fishing rates do not increase substantially, transferring Gulf of Mexico aggregated LCS sub-regional quotas could allow the fisheries in each sub-region and region to remain open through the end of the 2023 fishing year.

Therefore, NMFS adjusts the eastern and western Gulf of Mexico aggregated LCS management group sub-regional quotas for the remainder of the 2023 shark fishing year, unless NMFS announces another quota transfer in the **Federal Register** or closes the fishery. NMFS may also announce future retention limit adjustments as needed throughout the remainder of the 2023 shark fishing year.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N lat., proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region. The boundary between the western and eastern Gulf of Mexico sub-regions is drawn along 88° 00' W long. (§ 635.27(b)(1)(ii)).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments to respond to the unpredictable nature of shark species availability on the fishing grounds, the migratory nature of these species, and the regional variations in the shark fisheries. Providing prior notice and an opportunity for public comment on this quota transfer is impracticable. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, including the recently available March 2023 data, in deciding whether to transfer a portion of the eastern Gulf of Mexico sub-regional aggregated LCS quota to the western Gulf of Mexico sub-regional aggregated LCS quota. Delaying this action is contrary to the public interest, not only because it would likely result in a western Gulf of Mexico sub-regional aggregated LCS closure and associated costs to the fishery, but also administrative costs due to further agency action needed to re-open the fishery after quota is transferred. The delay would preclude the fishery from harvesting LCS in the western

Gulf of Mexico sub-region that are available on the fishing grounds that might otherwise become unavailable during a delay. This action does not raise conservation or management concerns. Transferring quota from the eastern Gulf of Mexico sub-region to the western Gulf of Mexico sub-region would have a minimal risk of exceeding the aggregated LCS quotas in the Gulf of Mexico region. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the commercial shark quotas and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there is also good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 21, 2023.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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